SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-016950 03/12/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

CRISTINA KAVALEC

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20806 N 38TH PL
PHOENIX AZ 85050

v.

RUSSELL RALLO

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3825 E POTTER DR
PHOENIX AZ 85050

PHX JUSTICE CT-NE

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This appeal from an order on August 20, 2002 continuing an Injunction Against Harassment after a hearing has been under advisement. This Court has considered and reviewed the record from the Northeast Phoenix Justice Court, and the Memoranda submitted by Appellant, Russell Rallo. Appellee, Cristina Kavalec, has chosen not to file a Memorandum in this case, though this Court specifically entered an order on December 19, 2002, extending time to file a responsive memorandum to January 17, 2003. Appellant has not requested oral argument in this matter.

A Petition for Injunction Against Harassment was granted by the trial court on July 29, 2002. Appellant, Russell Rallo, and Appellee, Cristina Kavalec, are neighbors within the City of Phoenix. Appellant requested a hearing on the Injunction Against Harassment and that hearing was held August 20, 2002. At the conclusion of the hearing, the trial court continued the Injunction Against Harassment in full force and effect, and only modified the Injunction to permit Appellant Rallo to be at his child's school, but with no contact with Appellee, Cristina Kavalec. Appellant filed a timely Notice of Appeal in this case.

Appellant's two first contentions are that harassment is a criminal offense and that he was denied his rights of due process in the civil Injunction Against Harassment hearing. Appellant's contentions are without merit as the crime of Harassment and the civil Injunction Against Harassment are distinct and different actions cognizable under Arizona Law.

Appellant also argues that the threats made by him and emails authored by him failed to constitute acts of harassment.

A.R.S. Section 12-1809 provides in Section R that harassment means:

> ... a series of acts over a period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose.

The other issues raised by Appellant concern the sufficiency of the evidence to warrant the trial court's conclusions and order continuing the Injunction Against Harassment in full force and effect. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[1] All evidence will be viewed in a light most favorable to sustaining a verdict and all reasonable inferences will be resolved against the Appellant.[2] If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Appellant.[3] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[4] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[5] The Arizona Supreme Court has explained in *State v. Tison*[6] that "substantial evidence" means:

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[1] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v.Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

[2] *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

[3] *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

[4] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

[5] *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

[6] SUPRA.

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[7]

This Court finds that the Appellant's contentions are without merit, that the trial court's order was not over broad and the trial court properly found harassment included emails sent by Appellant to Appellee. Further, the trial court determination and order was not clearly erroneous and was clearly supported by substantial evidence.

IT IS ORDERED affirming the Injunction Against Harassment, as modified, by the Northeast Justice Court.

IT IS FURTHER ORDERED remanding this case back to the Northeast Justice Court for all further and future proceedings, if any, in this case.

[7] Id. At 553, 633 P.2d at 362.